

**Brookline Board of Appeals  
April 14, 2016, 7:00 PM  
Public Hearing**

**333 Washington Street  
6<sup>th</sup> Floor Selectmen's Hearing Room**

**Board Members Present:** Mark Zuroff (Chairman), Christopher Hussey, Kate Poverman  
**Staff Present:** Michael Yanovitch (Build. Dept.), Jay Rosa (Planning Department)

**209 Harvard Street**

**Proposal:** Modify BOA #2260B to extend rental of open air parking spaces

**Zoning District:** G-1.75 (CC) General Business

**Precinct:** 9

**Board Decision:** Request for withdrawal without prejudice **granted**

**355 Buckminster Road**

**Proposal:** Construct mudroom addition in the side and rear yard, attaching the single-family dwelling to a two-car garage

**Zoning District:** S-25 (Single-Family)

**Precinct:** 14

**Board Decision:** Request for continuance, **granted to April 21, 2016**

**1018 Beacon Street**

**Proposal:** Construct a roof deck

**Zoning District:** L-1.0 (Local Business)

**Precinct:** 1

**Board Decision:** Request for withdrawal without prejudice **granted**

*Minutes shall be posted on the Town of Brookline website (<http://www.brooklinema.gov/564/Zoning-Board-of-Appeals>) upon approval. Draft minutes shall be made available upon request.*

*Decisions shall be posted on the Town of Brookline website ([www.brooklinema.gov](http://www.brooklinema.gov)). Appeals, if any, shall be filed with land court or superior court within twenty days after the date of filing of such notice in the office of the town clerk.*

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**Board Members Present** – Mark Zuroff (Chairman), Christopher Hussey, Kate Poverman  
**Staff Present** – Michael Yanovitch (Build. Dept.), Jay Rosa (Planning Dept.)

**7:00PM**

**209 Harvard Street** – Modify BOA #2260B to maintain rental of 86 garage parking spaces to area residents

Board Chairman Mark Zuroff opened the hearing and called case #2016-0022. Mr. Zuroff reviewed standard hearing procedure

The Petitioner's Attorney Cameron Merrill waived the reading of public hearing notice for the record and introduced property manager Chris Shako and project architect Cliff Robert. Attorney Merrill stated that special permit relief was granted in 1999 to permit dual use parking at 209 Harvard Street. During the daytime hours the 86 structured parking spaces are utilized for medical office use and during evening hours the spaces are made available for rent to neighboring residents. Attorney Merrill explained that a portion of these garage parking spaces are considered to be open air parking, therefore the applicant has applied for, and received, an open air parking license from the Board of Selectmen since 1999. Attorney Merrill noted that the special permit granted to permit this dual use parking included an imposed condition that required the renewal of special permit relief within 5 years at a public hearing with the Board of Appeals. Mr. Merrill confirmed that this zoning relief was not renewed within the 5 year time period, however the property owner has fully complied with open air parking requirements on an annual basis. Attorney Merrill concluded his comments by stating that no formal complaint regarding this dual use parking has been brought to the town to the best of his knowledge. For these reasons, the property owner is requesting to strike condition 3 from Board of Appeals decision #2260B.

Board Member Christopher Hussey clarified that the Petitioner is seeking a modification of prior imposed conditions associated with a special permit, but noted that granted relief has expired. Chairman Zuroff concurred with this reasoning and requested further detail in terms of the procedural requirements from the Planning and Building Department staff.

Zoning Coordinator, Jay Rosa, stated that the parking layout has not been altered in any way since the initial approval of dual use parking. Additionally, the structured parking itself has been reviewed annually by police, fire, public health, the building department, and the Board of Selectmen on an annual basis. Mr. Rosa reviewed language included in the public hearing notice for this matter. Mr. Rosa confirmed that the notice clearly states a request for modification for the purpose of maintain dual use parking in accordance with use #22. Mr. Rosa did confirm that the notice does not indicate that the Petitioner is seeking to renew special permit relief specifically.

Deputy Building Commissioner, Michael Yanovitch further stated that an argument could be made that the removal of condition 3 is not inconsistent with prior practice and would effectively eliminate the need to renew previously granted special permit relief.

Board Members did not disagree with this line of questioning but supported revised public notice and clear Board evaluation as to the standards for the grant of a new special permit, in addition to modification of the previously granted relief in 1999.

Attorney Merrill agreed with this Board request and requested that the Board withdraw the current request for modification without prejudice.

**The Board voted unanimously to withdraw the modification request without prejudice.**

**355 Buckminster Road** – Construct a mudroom addition in the side and rear yard attaching the single-family home to the two-car garage

Board Chairman Zuroff called case #2016-0013 and reviewed standard hearing procedure.

Property Owner, Sunaina Anand, waived the reading of public hearing notice for the record and stated that she is requesting a case continuance to 4/21/2016. Ms. Anand explained that the Planning Board requested that the mudroom/breezeway be modified to serve as a permanent structure rather than a retractable roof. For this reason, Ms. Anand will review the final design and building materials with the Planning Board prior to seeking relief before the Board of Appeals on 4/21/16.

The Board had not further question and no members of the public spoke on this request.

**The Board voted unanimously to continue this request for zoning relief to 4/21/16.**

**1018 Beacon Street** – Construct a roof deck

Board Chairman Zuroff opened the hearing and called case #2016-0011

Project Engineer, Fredrick Lebow of FSL associates waived a reading of public hearing notice for the record and stated that he is representing the Petitioner and property owner Richard Glanz. Mr. Lebow also introduced project architect Timothy Burke. Mr. Lebow stated that the Petitioner is proposing to install a modest roof deck approximately 21' x 24'. This roof deck would increase the maximum height of the structure by a few inches but the four-story structure already exceeds the maximum height requirement for the L-1.0 40 feet.

Mr. Lebow further stated that the subject property is a narrow lot and structure that is taller than adjacent commercial buildings. The fourth floor commercial unit is used for Glanz Properties itself and the roof deck would be accessed exclusively from the fourth floor unit. Mr. Lebow submitted photos of the building and rooftop and explained that the 2.5 foot slope of the roof would serve to limit visibility of the deck from Beacon Street below. Mr. Lebow described various rooftop mechanical equipment that exceed the maximum height of the roof deck itself. Mr. Lebow concluded his comments by characterizing the relief requested as an extension of a pre-existing nonconformity and reiterating that several similar roof decks are located throughout the immediate neighborhood.

Board Chairman Zuroff requested clarification that the structure only includes commercial uses and the roof deck serves as employee benefit. Mr. Lebow agreed with Mr. Zuroff's comments.

Board Member Hussey questioned whether or not a proposed acoustic wall triggers the need for zoning relief in the form of a variance for the maximum height. Mr. Lebow stated that the acoustic wall can be eliminated from the proposal. Deputy Building Commissioner Michael Yanovitch stated that the surface of the deck itself represents a maximum building height increase however required deck railings are exempt from the height calculation.

Board Member Poverman requested clarification regarding the need for a variance when By-Law Section 8.02.2 permits the alteration of a pre-existing nonconformity by special permit.

Mr. Yanovitch explained that a special permit is required under Section 8.02.2 to alter the pre-existing structure, however the By-Law provides no such special permit relief for maximum height requirements, thus a variance is required to further exacerbate this nonconformity.

Ms. Poverman requested that the Petitioner further detail compliance with the statutory requirements for the grant of a variance, in accordance with M.G.L., c.6. Mr. Lebow reiterated the fact that the subject lot is narrow in nature, the existing roof slopes down toward the rear of the structure by approximately two feet, and roof decks are common along this portion of Beacon Street.

Board Chairman Zuroff called for public comment in favor of, or in opposition to the Petitioner's Proposal.

No members of the public commented.

Chairman Zuroff requested that Zoning Coordinator Jay Rosa review the findings of the Planning Board. Mr. Rosa stated that the Planning Board unanimously recommended approval of the proposed roof deck. Board Members agreed that the deck location at the rear of the structure is not easily visible from Beacon Street and a private alleyway and parking area are located to the rear of the property itself. For these reasons, the Board did not anticipate adverse impact associated with the roof deck. The Board was also sympathetic that the overall resulting height increase is minimal at best.

Therefore, if the Board of Appeals finds that the statutory requirements for a variance have been met, the Planning Board recommended approval of the site plan by Stephen Desroche, professional land surveyor, dated 10/2/15 and plans by architect Timothy Burke, dated 6/26/15, subject to the following conditions:

1. Prior to the issuance of a building permit, the applicant shall submit a final roof plan and elevations with height specified, subject to review and approval by the Assistant Director for Regulatory Planning.
2. Prior to the issuance of a building permit, the applicant shall submit to the Building Commissioner for review and approval for conformance to the Board of Appeals decision: 1) a final site plan stamped and signed by a registered engineer or land surveyor; 2) final roof plans and 3) evidence that the Board of Appeals decision has been recorded at the Registry of Deeds.

Chairman Zuroff requested that Deputy Building Commissioner Michael Yanovitch review the opinion of the Building Department. Mr. Yanovitch acknowledged that the scale of the proposal is minor and the roof deck itself will not increase the overall height of the structure; however, the proposal is an intensification of the already non-conforming height. Mr. Yanovitch was hesitant to support non-conforming roof decks following the argument that they are common in the immediate neighborhood and therefore may generate little adverse impact. Mr. Yanovitch confirmed that this maximum height interpretation is consistent from the Building Department, but he was receptive to the argument that the provisions of Section 8.02.2 may be applied in this instance.

Chairman Zuroff clarified that the need for a variance was cited not because the roof deck exceeds the existing maximum height but rather because the deck represents a new portion of the structure that is located above the 40 foot maximum height requirement for the zoning district.

### ***Board Deliberation***

Board Member Hussey believed that the Petitioner could reach a roof deck proposal as a matter of right if no superstructure were installed. Mr. Hussey believed that a safety railing could be installed directly on the rubber roof membrane and the maximum height would not be exacerbated. Mr. Hussey acknowledged that this strategy would require interior roof reinforcement and building code compliance.

Chairman Zuroff stated that he was not convinced by the variance argument because the roof deck serves as an amenity and no hardship is presented.

Project Architect Timothy Burke stated that the narrow nature of the lot limits where the property owner may make improvements, particularly in terms of improved access to natural light and air.

Board Member Poverman restated that the variance standard requires lot or structural uniqueness, which the Petitioner may have, and specific hardship that is often directly related to that uniqueness. Ms. Poverman agreed that the Petitioner has not established an hardship, financial or otherwise.

Board Member Hussey suggested that the Petitioner consider a request for withdrawal and work with the Building Department to determine if construction materials and interior roof reinforcement may eliminate the exacerbated height and the associated variance that comes with it.

Mr. Burke requested to withdraw the appeal without prejudice

**The Board voted unanimously to withdraw the request for a variance without prejudice**

**The Board voted unanimously to approve draft hearing minutes from 3/31/16 and 4/7/16**

**Hearing Closed.**